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No.

IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1998

WILLIAM ROGERS

Petitioner,

v.

DISTRICT OF COLUMBIA

Respondent.

On Petition For A Writ Of Certiorari To
The United States Court Of Appeals For
The District of Columbia

PETITION FOR WRIT OF CERTIORARI

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54 pp

QUESTIONS PRESENTED

1. Whether the constitution protects an inner city high school teacher from the termination of his governmental employment in retaliation for advocating the teaching of advanced mathematics to minority high school students?

2. Whether Petitioner was denied his constitutional rights to due process of law when lower federal courts overlooked important evidence, ruled that one must exhaust First Amendment remedies, failed to correct constitutional errors and denied Petitioner an opportunity to be heard concerning deprivation of his constitutional rights?

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PETITION FOR WRIT OF CERTIORARI

The petitioner William Rogers respectfully prays that a writ of certiorari issue to review the judgment and opinion of the United States Court of Appeals for the District of Columbia Circuit entered in this proceeding on April 7, 1999.

OPINIONS BELOW

The Judgment and opinion of the Court of Appeals for the District of Columbia Circuit is unpublished and appears in Appendix 4a hereto. The opinion of the United States District Court for the District of Columbia appears at Appendix 10a hereto.

JURISDICTION

The judgment of the Court of Appeals for the District of Columbia Circuit was entered on April 7, 1999. A timely petition for rehearing was denied on May 20, 1999, and this petition for certiorari was filed within 90 days of that date. This Court's jurisdiction is invoked under 28 U.S.C. §1254(1).

CONSTITUTIONAL PROVISIONS INVOLVED

The constitutional provisions involved are the First Amendment and the

Due Process Clause of the Fifth Amendment to the Constitution of the United States.

STATEMENT OF THE CASE

Petitioner started his employment as a teacher with the D.C. Public School system in 1971. He was a mathematics teacher at Anacostia High School from 1973 to 1996. The student population of Anacostia High School is overwhelmingly African-American. Petitioner served in the U.S. Army from 1959-1961, where he was honorably discharged. Petitioner possesses a Bachelor's degree in mathematics, a Masters degree in Computer Science and Math Education and was a Ph.D candidate at American University at the time of his discharge. After over 20 years of service, Petitioner had never received a bad or unsatisfactory performance rating. In fact, Petitioner served as Chairman of the Math Department at Anacostia from 1993

to 1995. During the Fall semester of the 1995 school year, Petitioner's request to teach advanced placement mathematics at Anacostia High School was denied. It was Petitioner's expressed opposition to the denial of his proposal for the school to teach advanced mathematics in the school curriculum that he contends he was retaliated against for exercising his First Amendment rights. In 1996, Petitioner's performance evaluation was lowered for the first time and he was terminated under the pretext of a reduction in force. The District Court granted summary judgment on Petitioner's constitutional claim on the asserted basis of "fail[ing] to exhaust his First Amendment administrative remedies with

respect to his First and Fourteenth Amendment claims." JA at 101.[1]

REASONS FOR GRANTING THE WRIT

Petitioner has been deprived of substantive constitutional rights to free speech concerning advocating an advanced educational curriculum for minority inner city students and due process rights in the loss of his long-term governmental employment for exercising his First Amendment rights. In addition, Petitioner has been denied a fair process and forum in which to contest the deprivation of his constitutional rights. First, there were mistakes in the District Court concerning Petitioner's constitutional claims, i.e., one must exhaust an administrative process

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[1] All references to the Fourteenth Amendment should be to the Fifth Amendment as the correct due process and equal protection provisions covering the District of Columbia. See, Bolling v. Sharpe, 347 U.S. 497 (1954).

before raising a constitutional claim which clearly influenced an award of summary judgment to the Government of the District of Columbia. Second, the District of Columbia Circuit's opinion misapprehended the true nature of Petitioner's constitutional claims and erroneously articulated an untenable legal position that could have been pointed out and corrected had oral argument been allowed as originally ordered. Petitioner has not received the process he was due under the Constitution and this Court must use its supervisory powers to correct this miscarriage of justice.

Petitioner is filing this petition because the District of Columbia Circuit misapprehended relevant evidence and points of law when rendering its decision. In the interest of substantial justice, a Petition is required to give this Court an

opportunity to establish the parameters of cultural freedom for inner city public school teachers, correct the errors, oversights and misapprehension of constitutional principles, points of law and disputes left open in the District of Columbia Circuit's opinion.

A. This Court Must Correct The Erroneous Ruling By the District Court On Petitioner's Constitutional Claims

This Court has an obligation to correct erroneous pronouncements of the law made by lower federal courts when ruling on substantive constitutional rights of a party. Here, the District Court erroneously ruled that "Plaintiff has not pursued the administrative remedies available to him before bringing his First and Fourteenth Amendment claims for damages before this Court. These claims are thus also barred and summary

judgment will be entered for Defendant." App. At 24a. Contrary to the District Court's erroneous ruling, there are no administrative remedies available to Petitioner for correcting constitutional violations. The vindication of the deprivation of constitutional rights is one of the primary reasons we have federal courts. If one has to wait for the exhaustion of an administrative process in order to gain access to a federal court to protect constitutional rights then it is a recognition that one does not have protection in federal court for constitutional rights. The decision of the District Court is contrary to well settled law. See, Darby v. Cisneros, 509 U.S. 137 (1993) and Johnson v. Greater Southeast Community Hospital, 951 F.2d 1268, 1276 (D.C. Cir.1991).

The D.C. Circuit did not correct this obvious misstatement and misapplication of the law by the District Court. Instead, the Circuit erroneously stated that "the evidence demonstrates that the termination of Mr. Rogers could not have been in retaliation for his statements to the media, because he was placed on the reduction-in-force list and so notified before the occurrence of his alleged protected speech." App. At 5a. Unfortunately, the D.C. Circuit misapprehended Petitioner's constitutional argument and supporting evidence in the ruling that was rendered without the benefit of oral argument that was due Petitioner.

B. The D.C. Circuit's Misapprehended Petitioner's Constitutional Argument As Demonstrated By Its Mistaken View Of The Evidence Supporting Petitioner's Claims For Violation of His Constitutional Rights

In the Complaint filed by Petitioner, it was alleged that Petitioner was intentionally selected for the RIF, among other things, because "of his ... prior constitutionally protected speech on matters of public concern, the school curriculum at Anacostia Senior High School." There was substantial record evidence to show that this matter was presented to the EEOC and the District Court before it was presented to the D.C. Circuit. For example, in record evidence before the D.C. Circuit, it was clearly and fully stated that Petitioner's constitutional rights were other than the statements made to the media in 1996. It

was Petitioner's civil rights advocacy for advanced mathematics courses in 1995 that was the constitutional protected speech at issue in this case. It was Petitioner's efforts in trying to enhance the educational and mathematic opportunities of the minority inner city students at Anacostia High School that caused the Government to wrongfully place Petitioner on the RIF list for termination. Because the D.C. Circuit by order dated March 31, 1999, withdrew the expected oral argument, the following evidence in the record was overlooked:

> In May 1995, Mr. Rogers submitted a request to teach advanced placement mathematics courses to his students. In September 1995, when he learned that his request had been denied, he filed a grievance indicating that `I am very much dedicated in the benefit of sequential Instruction of students interested in the advance courses I proposed to teach. To this purpose I am

> committed in pursuing the equity and fairness of including my proposed May 15, 1995 schedule. I simply want to serve and enhance students growth with advance courses in mathematics and if students are not given the opportunity to advance their mathematical skills, they become the victim.'
>
> Mr. Rogers' grievance was rejected and he was not permitted to teach advance mathematics courses, despite the fact his previous students were counting on and had prepared to take these courses. In addition, as a result of exercising his First Amendment right to criticize the school curriculum to improve the education of his students, Mr. Rogers has been subjected to retaliation . . . . Lastly, such retaliation has included eliminating his position for September 1996 allegedly as part of a reduction in force."

The lower federal courts overlooked or ignored all of the above record evidence demonstrating a violation of Petitioner's constitutional rights because of his speaking out in favor of advancing African American, inner city students'

mathematical skills. Although he was not required to, Petitioner raised his constitutional claims with the EEOC as reflected in his Pre-Complaint Questionnaire. ("File several grievance related to discrimination practices by administration, fellow department members of the mathematics Department, denying my first amendment rights, constitution rights, Human Rights, Union Rights and political views.").

This case presents an opportunity to address the historical bias against educating African-Americans for higher level achievement. During the period of slavery in this country, it was against the law in many jurisdictions to teach African slaves to read or write.[2] This

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[2] "While the demands upon their bodies were excessive, the minds of the slaves were left frankly free to atrophy. All slave holders agreed that the thinking slave was a potentially rebellious slave. Among the more insistently

case demonstrates that there are still vestiges of slavery prohibiting the teaching to African American, inner city high school students the knowledge of advanced mathematics. Petitioner simply wanted to "enhanced students growth with advanced courses in Mathematics" because if inner city, African American "students are not given the opportunity to advance their Mathematical skills, they become the victims." This case tells a lot about the lingering vestiges of slavery in American culture. It reveals governmental resistance to the universal teaching of advanced mathematical knowledge to African

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enforced sections of the black codes was the prohibition against teaching a slave to read or write or giving him or her pamphlets, not excluding the Bible or religious tracts. So apprehensive were members of the slavocracy about the great mischief that literacy might stir that in many states it was illegal to teach free as well as enslaved Negroes." Kluger, Simple Justice:The History of Brown v. Board of Education and Black America's Struggle for Equality, p.28 (1976).

American, inner city students and the resultant unconstitutional punishment heaped upon Petitioner who dared to speak out in a free exchange of discourse on this politically charged institutional victimization of black students.[3] Surely Petitioner should not have been required to accept the ugly stereotype that black, inner city students are inferior, rather than wrestle with the reality that black, inner city students are being programmed and mis-educated for failure and victimization in their lives beyond high school, in order to keep his teaching job. Petitioner was engaged in civil rights

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[3]This Court may take judicial notice that where the math SAT performance of blacks has improved in absolute terms and relative to whites it has been partly because of two contributing factors: "patterns of course enrollment among blacks and whites, and policies aimed at improving the educational status of blacks, such as school desegregation and compensatory education efforts." See, "The Schooling of Black Americans" in A Common Destiny: Blacks And American Society, p.350 (1989).

activities when he proposed and advocated his position for compensatory educational efforts in the form of advanced mathematics courses for the students at Anacostia High School. It was his way of speaking out against what he perceived as the continuing victimization of black students at Anacostia High School. He saw his students as people with higher aspirations that were being dashed and not met.[4] This Court should vindicate this important constitutionally protected speech issue by correcting the lower

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[4]The first black person to receive a degree in pure mathematics from an American University did not occurred until the first quarter of the 20th Century. See, Kenschaft, Patricia C., "Black Women in Mathematics in the United States", in Blacks In Science:ancient and modern, Ivan Van Sertima, ed., 293,(1983)("The first year that a Black woman received a Ph.D. degree in pure mathematics from an American university was in 1949. In that year there were two: Marjorie Lee Browne at the University of Michigan and Evelyn Boyd Granville at Yale University,... and the first Black man, [to receive such a degree] Elbert Cox, in 1925 from Cornell." (Footnotes omitted).

federal courts rulings that Petitioner's constitutional case is just about "statements to the media" that occurred after Petitioner had already spoken out about the mis-education of black, inner city students by the Government's prohibiting the teaching of advanced mathematics at Anacostia High School.[5]

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[5]With regard to the now well established "differential course taking" hypothesis that Petitioner was advancing at Anacostia H.S., it is now clear amongst educational researchers in the area of mathematics, the patterns of course enrollment are related to achievement test performance. See, "The Schooling of Black Americans" in A Common Destiny: Blacks And American Society, p.350 (1989). This is because blacks are less likely than whites to be enrolled in advanced mathematics course. Id. Moreover, in schools with larger proportions of black students, such as Anacostia H.S., there is a tendency for such schools to have a lower average number of advanced mathematics courses taken by students. Id. Based on his doctoral studies, Petitioner was quite aware of the recent data demonstrating that although black students at Anacostia were less likely to be enrolled in advanced mathematics classes, he wanted to change this pattern because of the strong relation that existed between course taking and test performance, especially in the area of Mathematics. Id. At 351. This Court can take judicial notice of the scholarly research that supports the above findings and Petitioner's advocacy for advanced mathematics courses at

This case is about the unfair price an inner city high school mathematics teacher had to pay for advocating cultural literacy in advanced mathematics for inner city High School students in the nation's capital. Granting this petition is extremely important because it is now time to again address the legal questions of educational policy and social justice for minority inner city students in particular, and all students in our

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Anacostia. See, Martin L. Johnson, Blacks in mathematics: a status report. Journal for Research in Mathematics Education 15(2):145-153 (1984); Lyle V. Jones, Nancy Burton, and Ernest C. Davenport, Monitoring the mathematics achievement of black students. Journal for Research in Mathematics Education 15(2):154-164 (1984); Cora Bagley Marrett, Black and Native American students in precollege mathematics and science. Pp. 7-32 in Linda S. Dix, ed., Minorities: Their Underrepresentation and Career Differentials in Science and Engineering, Proceedings of a Workshop. Office of Scientific and Engineering Personnel. Washington, D.C.: National Academy Press(1987); and Westina Matthews, Influences on the learning and participation of minorities in mathematics. Journal for Research in Mathematics Education 15(2):84-95 (1984).

country in general. Petitioner's advocacy for sharing knowledge of advanced mathematics with minority inner city high school students in order to enable such students to acquire equally the ability to hold positions of responsibility and power in our country. Petitioner's advocacy for the necessity of exposure to and mastering of advanced mathematics for inner city students to avoid patterned victimization and to ameliorate their social and economic status deserves legal protection.

The essence of Petitioner's advocacy of the broader issues of educational policy and social justice for inner city students was succintly stated in E.D. Hirsch, Jr.'s book entitled Cultural Literacy: What Every American Needs to Know (1987):

> Industrialized civilization [imposes] a growing cultural and structural complexity which requires persons to have a broad grasp of what Professor Hirsch has called cultural literacy: a deep understanding of mainstream culture, which no longer has much to do with white Anglo Saxon Protestants, but with the imperatives of industrial civilization. It is the need for cultural literacy, a profound conception of the whole civilization, which is often neglected in talk about literacy.

See, Hirsch, Cultural Literacy, p. 10-11 quoting Harvard historian and sociologist Orlando Patterson at the conference dedicated to Mina Shaughnessy, an English teacher who devoted her professional life to helping disadvantaged students become literate. Id.

The lingering shadow of slavery and segregation are implicated in current discussions of educational policy and social justice for students in the inner cities of this country. Petitioner dared

to speak up for cultural literacy in advanced mathematics and was fired by the local governmental school system. This has a chilling effect on freedom of speech, due process and equal protection of the law. If Petitioner cannot turn to the federal courts for competent vindication of his rights, where does he go for vindication after being punished for petitioning his government for redress of a grievance in intentionally victimizing inner city students to a life of menial tasks and poverty. Petitioner is simply asking this Court to protect his right to advocate to local governmental school officials the need to complete the work started by this Court in its landmark cases of Brown v. Board of Education, 347 U.S. 483 (1954) and Bolling v. Sharpe, 347 U.S. 497 (1954).

Petitioner Was Denied A Hearing

Contrary to the D.C. Circuit's assertion in its Order dated March 31, 1999, oral argument would have been of significant aid to the Court in fairly considering and deciding this case. First, this case is far from frivolous. Second, the dispositive issue or issues have not been authoritatively decided, e.g., neither the District Court nor the D.C. Circuit has properly or even remotely addressed the correct constitutional issue concerning Petitioner's right to speak out in defense of his proposal to teach advanced mathematics to black, inner city high school students without fear of retaliation from the Government of the District of Columbia. Third, while Petitioner's constitutional claims are properly raised in Petitioner's record on appeal, the D.C. Circuit has ignored the

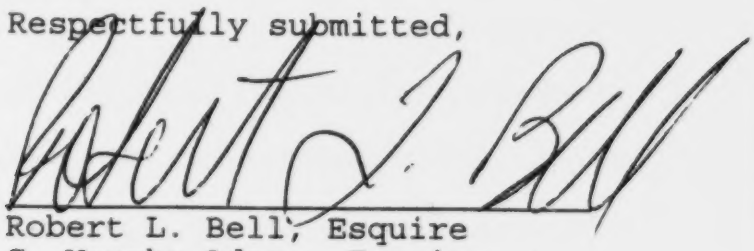
constitutional argument and its applicable timing to the facts of this case. Based on the D.C. Circuit's erroneous ruling, it is clear beyond cavil that Petitioner's briefs, pleadings and record evidence have not been adequately analyzed. The facts and legal argument of Petitioner on his constitutional issues have been misapprehended as evidenced by the D.C. Circuit's erroneous finding in its decision "that the termination of Mr. Rogers could not have been in retaliation for his statements to the media, because he was placed on a reduction-in-force list and so notified before the occurrence of his alleged protected speech." App. At 5a.

CONCLUSION

For these foregoing reasons, a writ of certiorari should issue to review the

judgment and opinion of the District of Columbia Circuit.

Respectfully submitted,



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